

# IMBA's General Terms and Conditions for Provision of ES Cell Clones from HAPLOBANK

## 1. Contract Terms

These are the contract terms and conditions ("TERMS") under which IMBA provides its homo- and hemizygous ES cell clones from HAPLOBANK ("HAPLOBANK CELLS") to RECIPIENT. These TERMS together with the MATERIAL TRANSFER AGREEMENT and the quotation create the contract ("CONTRACT") between IMBA and RECIPIENT for the provision of HAPLOBANK CELLS. The CONTRACT is only created when RECIPIENT accepts the TERMS, submits the signed MATERIAL TRANSFER AGREEMENT and the order has been accepted by HAPLOBANK.

## 2. Order, Delivery and Cancellation

2.1 Orders at HAPLOBANK can only be placed through our web-based ordering system at [www.haplobank.at](http://www.haplobank.at). The HAPLOBANK order system automatically generates a MATERIAL TRANSFER AGREEMENT that needs to be signed off by RECIPIENT and send as a pdf document to [office@haplobank.at](mailto:office@haplobank.at). You will then receive an email by HAPLOBANK that finally confirms your order.

2.2 Shipment of our HAPLOBANK CELLS usually take up to 2 months from the ordering date. We will try to meet the delivery dates specified in your order, depending on availability and any lead times that may apply. If speeding up or delaying the date of delivery would be helpful, please contact [office@haplobank.at](mailto:office@haplobank.at) to see if we can reschedule your delivery.

2.3 The order can be cancelled free of charge within five (5) days of the order confirmation date. For cancellation of your order within this period please send an email to [office@haplobank.at](mailto:office@haplobank.at). We only accept written cancellations.

2.4 A cancellation fee of 20 % of the total payment amount will be charged if the 5-day order period has passed. No refund will be given, once the HAPLOBANK CELLS are ready for shipment by the time you wish to cancel the order.

## 3. Quality Control

3.1 We want you to receive our HAPLOBANK CELLS in good condition. We only send out HAPLOBANK CELLS that pass all our internal quality control tests.

3.2 Even though our HAPLOBANK CELLS pass this stringent quality control, we cannot offer a guarantee that they may work for your specific experiment, as the HAPLOBANK CELLS supplied to customers are handled in your laboratories outside our supervision.

3.3 You can return HAPLOBANK CELLS that are damaged or defective on delivery (except for loss and damage due to shipment), if you contact us via email [office@haplobank.at](mailto:office@haplobank.at) within fourteen (14) working days from the day you receive the HAPLOBANK CELLS. If you do not contact us within this 14-day period, the shipment will be deemed accepted.

## **4. Shipment**

- 4.1 We only provide HAPLOBANK CELLS for shipment via your account at the commercial carriers FedEx or DHL. You will be responsible for transportation, the payment of transportation costs, applicable taxes and custom duties.
- 4.2 Orders are delivered and concluded when your commercial carrier takes over the HAPLOBANK CELLS at our facility. At this point you become responsible for risk of loss and damage.
- 4.3 We take no responsibility for the condition of the HAPLOBANK CELLS due to the shipment via FedEx or DHL. If any HAPLOBANK CELLS are lost or damaged while it is being transported, we will try to help you deal with the issue with your carrier.
- 4.4 We do not clear HAPLOBANK CELLS for import into your country. Doing so is your responsibility and we request a valid permit to avoid conflicts with your transportation carrier. If the order is ready to ship, but no valid permit is present, you will be informed via email. If we do not receive all the necessary documents within two weeks, HAPLOBANK has the right to discard the order and only pending items will be refunded.
- 4.5 Should the shipment be refused or discarded by customs (or by import regulation agency) due to an invalid import permit, HAPLOBANK will not replace the order or shipping costs.

## **5. Pricing**

- 5.1 All prices for our HAPLOBANK CELLS are published on our website ([www.haplobank.at](http://www.haplobank.at)). These prices may be changed at any time without notice.
- 5.2 Our published prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. In any case, should a situation occur that requires us to prepay them, we will add them to your invoice.

## **6. Invoice and Payment**

- 6.1 Invoices will be automatically generated after order confirmation and sent to you as a pdf document to RECIPIENT scientist's email address.
- 6.2 All payments shall be made in advance using VISA or Master Card. You may contact HAPLOBANK for alternative routes of payment which will imply additional handling fees for manual invoicing.
- 6.3 If your payment is not approved by the credit card company, your order will be cancelled. If your payment is overdue, we may charge you a late-payment charge, from the due date until paid, at the rate of one percent (1%) per month.

## **7. Product Use and Restrictions**

- 7.1 You agree to use the HAPLOBANK CELLS in compliance with all applicable laws, governmental regulations, guidelines, and ethical rules such as, for example, those relating to research involving the use of animals and recombinant DNA. The HAPLOBANK CELLS will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects.

7.2 The HAPLOBANK CELLS are to be used only at the RECIPIENT organization and only in the RECIPIENT scientist laboratory under the direction of the RECIPIENT scientist or other workers under his/her direct supervision who are bound by obligations not less strict than those set out herein.

7.3 The RECIPIENT and RECIPIENT scientist will not transfer the HAPLOBANK CELLS to anyone else within the RECIPIENT organization and will not supply the HAPLOBANK CELLS to any third party without the prior written consent of IMBA.

## **8. Publications**

The RECIPIENT scientist shall have the right to publish its findings and results from the research with the HAPLOBANK CELLS, provided that IMBA and HAPLOBANK are acknowledged as the source of the HAPLOBANK CELLS.

## **9. Intellectual Property**

9.1 Our provision of HAPLOBANK CELLS only grants you a limited, non-transferable right under intellectual property owned by IMBA to use the HAPLOBANK CELLS only for your academic, internal research purposes and not for COMMERCIAL PURPOSES<sup>1)</sup>.

9.2 Specific clause for provision of HAPLOBANK CELLS to RECIPIENTS in the United States of America and Europe:

9.2.1 Third-party intellectual property ("THIRD-PARTY IP") exists in form of US Patent No. 9,957,479 and European patent EP 2681310 B1 that prevents IMBA from distributing hemizygous targeted haploid ES cell clones from HAPLOBANK to RECIPIENTS in the United States of America and European countries with a valid patent of the THIRD-PARTY IP in force.

9.2.2 IMBA can only distribute homozygous targeted diploid ES cell clones from HAPLOBANK to Recipients in the United States of America and Europe.

9.2.3 If RECIPIENT requires HAPLOBANK CELLS that are hemizygous targeted haploid ES cell clones, a license is required from the THIRD-PARTY IP holder (European Patent register at <https://register.epo.org/application?number=EP12708382&tab=main>).

## **10. Limitations of Liability**

10.1 To the extent permitted by applicable law, we will not be liable under any legal theory (including but not limited to CONTRACT, negligence, strict liability in tort or warranty of any kind) for any indirect, special, incidental, punitive, multiple, exemplary or consequential damages (including but not limited to costs of cover, lost profits, lost data, loss of business, loss of goodwill or loss of revenue) that you might incur under the CONTRACT, or that may arise from or in connection with use of the HAPLOBANK CELLS.

1) COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of HAPLOBANK CELLS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of HAPLOBANK CELLS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the HAPLOBANK CELLS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the HAPLOBANK CELLS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

10.2 Our maximum aggregate liability arising out of or in connection with the CONTRACT is limited to the amount paid to us for the HAPLOBANK CELLS. However, these provisions do not limit our liability for death or personal injury caused by or gross negligence or fraud, fraudulent, misrepresentation or any other liability that cannot be excluded by law.

10.3 Delivery dates and times are estimates only and we will not be liable (in CONTRACT, delict, tort or otherwise) for any losses, expenses, claims or damages caused by a late delivery.

## **11. Entire Contract**

11.1. The CONTRACT represents the entire agreement between you and IMBA regarding the HAPLOBANK CELLS we provide to you under it, and supersedes and replaces any previous agreements between us (whether written or oral). Any of your additional or different terms and conditions that you may provide to us, are material alternations and we reject them. Our offer to provide HAPLOBANK CELLS is expressly limited to the TERMS of the CONTRACT. The CONTRACT cannot be amended or modified unless we agree in writing.

11.2. We reserve the right to change these TERMS at any time. Any changes made to these TERMS will not apply to the CONTRACT between us for any order we receive before the changes are made.

## **12. Miscellaneous**

12.1 We will not be responsible or liable for failing to perform our obligations under the CONTRACT to the extent caused by circumstances beyond our reasonable control.

12.2 Our failure to exercise any rights under the CONTRACT is not a waiver of our rights to damages for your breach of CONTRACT and is not a waiver of any subsequent breach. If any provision or part of the CONTRACT is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the CONTRACT. No person other than you or us will have any rights under the CONTRACT. Headings are for convenience only and shall not be used in the interpretation of these TERMS.

12.3 You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including any gene sequences, oligo types or sequences) received from us as a result of discussions, negotiations and other communications between us in relation to products or services from HAPLOBANK.

12.4 This CONTRACT and any disputes or claims arising out of or in connection with it are governed by the laws of Austria. RECIPIENT and IMBA agree that the courts of Austria have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement.